SIA KWONG SANG

v.

INSPECTOR-GENERAL OF POLICE & ORS.

SUPREME COURT, KUALA LUMPUR
ABDUL HAMID OMAR LP
HASHIM YEOP SANI CJ (MALAYA)
MOHD. JEMURI SERJAN SCJ
[SC CRIMINAL APPEAL NO. 05-75-90]
31 JANUARY 1991

STATUTORY INTERPRETATION: *Amending Act - Retrospective legislation - Validates invalid detention orders - Whether added to principal Act - Technique of amending legislation - Textual - Referential - Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1990, s. 5.*

In these appeals, a common point of law as preliminary objection was raised as to whether s. 5 of the Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1990 (the 1990 Act) is valid and has legislative effect. Section 5 of the 1990 Act was introduced by Parliament to render valid orders of the kind which have been held by the Supreme Court to be defective.

The appellants argued that s. 5 of the 1990 Act is invalid as s. 5 cannot be construed as being added to the principal or parent Act and that such provision can only be given force if it be made part of the parent Act by the process of amendment; as such s. 5 of the 1990 Act was not an amendment, it was invalid and of no legislative effect.

Held:

[1] The object of both subsections of s. 5 of the Amendment Act is to validate all detention orders of the kind held defective by this Court except that the validation should not affect any legal proceedings which had concluded and the final decisions of the Court given before the commencement of the Amendment Act.

[2] (a) The technique of amending a legislation vary from jurisdiction to jurisdiction and the style and technique very much depend on the practice adopted in that particular jurisdiction;

(b) there are two methods of amending a statute;

(i) one method of amendment is the verbal amendment or otherwise referred to as the direct or textual method. This is the most common method and best understood method and is commonly used in all Commonwealth countries;

(ii) the other method is the indirect method sometimes also called the referential or independent method. Section 5 of the Amendment Act which is the subject of this appeal is of the latter type.

(c) for the purpose of validating an act done under a statute the referential or independent method of amendment is the most appropriate method.

[3] The validity of s. 5 of the Amendment Act was in fact already recognized by this Court in *Poh Chin Kay's* case

[Appeal on preliminary point dismissed.]

Cases referred to:
Khuda Bux v. Manager, Caledonian Press [1954] AIR Calcutta 484 (Vol 41 CN 165)
Poh Chin Kay v. Menteri Hal Ehwal Dalam Negeri, Malaysia [1990] 1 CLJ (Rep) 155
Raman Sahadevan v. R. Kesavan Nair [1973] AIR Kerala 136 (V 60 C 46)

Legislation referred to:
Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1990, s. 5(1)

For the appellants in Sc Cr. Appeal Nos. 05-75-90, 05-76-90, 05-77-90 - Karpal Singh; M/s. Karpal Singh & Co.
For the appellants in Sc Cr. Appeal Nos. 05-78-90, 05-79-90, 05-80-90, 05-81-90, 05-82-90 & 05-83-90 - V. Shanmugam; M/s. Shanmugam & Co.
For the respondents in all cases - Suriyadi b. Halim Omar, (Noorbahari b. Baharuddin & Jalaldin bin Hussain with him); Deputy Public Prosecutors

[**Editors Note**: The following cases were heard together at this Supreme Court sitting:
List of cases:
Chuah Peng Lam v. Menteri Hal Dalam Negeri, Malaysia & Anor. [SC Criminal Appeal No. 05-76-90]
Mohd. Yatim bin Bachok v. Minister of Home Affairs & Anor. [SC Criminal Appeal No. 05-77-90]
Lim Kwee Pah v. Minister of Home Affairs & Anor. [SC Criminal Appeal No. 05-78-90]
Yew Kok Kheng v. Minister of Home Affairs & Anor. [SC Criminal Appeal No. 05-79-90]
Chin Tian Kyan v. Minister of Home Affairs & Anor. [SC Criminal Appeal No. 05-80-90]
Yew Kok Ann v. Minister of Home Affairs & Anor. [SC Criminal Appeal No. 05-81-90]
Wong Choo Weng v. Minister of Home Affairs & Anor. [SC Criminal Appeal No. 05-82-90]
Goh Chan Chuan v. Minister of Home Affairs & Anor. [SC Criminal Appeal No. 05-83-90].]

JUDGMENT

Hashim Yeop Sani CJ (Malaya):

All the appellants in these appeals were detained under detention orders of the kind held by this Court to be defective. See *Hong Siew Sin v. Menteri Hal Ehwal Dalam Negeri & Ors.* and *Chye See Chong v. Menteri Hal Ehwal Dalam Negeri & Ors.* [1990] 2 MLJ 90.

After the decisions were handed down by this Court retrospective legislation was then introduced and passed by Parliament to render valid orders of the kind held to be defective as aforesaid. That legislation was the Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1990 (the Amendment Act).

A common point of law as preliminary objection was raised in all the *habeas corpus* proceedings in the High Court which became the subject of these appeals. The sole issue is whether s. 5 of the Amendment Act is valid and has legislative effect.

Section 5 of the Amendment Act reads as follows:

> 5(1) Where a detention order was made under subsection (1) of s. 6 of the principal Act against any person during the period between the commencement of this Act (hereinafter referred to as the "transitional period"), the detention order and the detention effected in pursuance thereof during the transitional period, and its continuation thereafter, if any, are hereby declared lawful and valid, and shall be deemed to be, and to have always and at all times been, lawful and valid, notwithstanding that:
>
> (a) the period for which it was directed by that order that such person be detained commenced from a date other than the date on which the detention order was made; or

(b) the detention order was a fresh detention order made after the revocation of a previous detention order against such person.

(2) No action, suit, prosecution or other legal proceeding whatsoever of any description or in any form shall be brought, instituted or maintained in any Court on any ground after the commencement of this Act or, if brought or instituted before the commencement of this Act, shall continue to be maintained, for or on account of, or in respect of, anything lawfully done in relation to the detention order or the detention declared lawful and valid under subsection (1), save that the provisions of this subsection shall not apply to any such legal proceeding which had concluded and the final decision of the Court in respect of which had been given before the commencement of this Act, or to any appeal in respect of such final decision.

The Amendment Act was passed to amend the parent Act and it received the Royal Assent on 31 March 1990 and was gazetted on 2 April 1990.

It can be seen that s. 5 of the Amendment Act consists of two subsections. Subsection (1) seeks to validate retrospectively all detention orders of the kind held to be defective by this Court as aforesaid. Subsection (2) provides that no action, suit, prosecution or other legal proceeding shall be brought, instituted or maintained in any Court on any ground after the commencement of the Amendment Act or, if brought or instituted before the commencement of the Amendment Act shall continue to be maintained for or on account of anything lawfully done in relation to the detention order or the detention declared lawful and valid by subsection (1).

The object of both subsections of s. 5 of the Amendment Act is to validate all detention orders of the kind held defective by this Court except that the validation should not affect any legal proceedings which had concluded and the final decisions of the Court given before the commencement of the Amendment Act.

It was contended on behalf of the appellants that s. 5 of the Amendment Act is invalid on the grounds apparently that the said s. 5 cannot be construed "as being added to the principal or parent Act", and such provision can only be given force if it be made part of the parent Act by the process of amendment. Accordingly it was argued that s. 5 did not constitute an amendment and therefore was invalid and has no legislative effect. It was also argued that s. 5(1) of the Amendment Act does not amount to anything and neither is it included into the parent Act. As such, so the argument goes, that section in its entirety should not be given legislative effect.

In the judgment of the learned Judicial Commissioner (Richard Talalla JC) in the Muar High Court Criminal Application No. 44-29 of 1990, No. 44-110 of 1990, No. 44-104 of 1990 and No. 44-33 of 1989 the argument of Counsel was recorded in the following words:

Counsel relied on 2 Indian decisions namely *Raman Sahadevan v. R. Kesavan Nair* (AIR [1973] Kerala 136 (V 60 C 46) and *Khuda Bux v. Manager, Caledonian Press* (AIR [1954] Calcutta 484 (Vol. 41, CN 165). In the latter case particular reference was made to the dictum of Chakravartti CJ at p. 486. There the learned Chief Justice, in reference to the scope and effect of a repealing and amending Act, said:

Such Acts have no legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts, because having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reason for their existence.

In our view the argument for the appellants is without merit. The technique of amending a legislation vary from jurisdiction to jurisdiction and the style and technique very much depend on the practice adopted in that particular jurisdiction.

Broadly speaking there are two methods of amending a statute. One method of amendment is the verbal amendment or otherwise referred to as the direct or textual method. This is the most common method and the best understood. It is commonly used in all Commonwealth countries.

The other method is the indirect method sometimes also called the referential or independent method. Section 5 of the Amendment Act which is the subject of this appeal is of the latter type.

For the purpose of validating an act done under a statute the referential or independent method of amendment is the most appropriate method.

The validity of s. 5 of the Amendment Act was in fact already recognized by this Court in *Poh Chin Kay v. Menteri Hal Ehwal Dalam Negeri, Malaysia* [1990] 1 CLJ (Rep) 155 where it was observed:

> The scenario has of course changed with the passing of the Amendment Act A766 especially the omnibus validation by s. 5 of that Act.

Section 5 of the amending Act certainly has legislative effect.

The appeal on the preliminary point was accordingly dismissed.

Also found at [1991] 2 CLJ 913